

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 840 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

and

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MADHUPURI CORPORATION

Versus

PRABHAT JHA

DY DIRECTOR OF INCOME TAX-INV

Appearance:

MR KA PUJ for Petitioners

MR MANISH R BHATT for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE M.S.SHAH

Date of decision: 23/03/2000

ORAL JUDGEMENT

(Per M.S. Shah, J.)

In this petition under Article 226 of the Constitution the petitioners, three in number, have challenged the authorisation issued by the Director of Income Tax (Investigation) (hereinafter referred to as "respondent no.2") on 15 concerns by common authorisation under section 132(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") and the summons dated 13.1.2000 issued under Section 131(1A) by respondent no.1, Deputy Director of Income-tax (Investigation) at Bhavnagar as also the notices dated 10.12.1999 on petitioner no.3 and notice dated 18.1.2000 on petitioners nos.1 and 2 issued by respondent no.3, Deputy Commissioner of Income-tax (Investigation), Bhavnagar, under Section 158 (BC) of the Act. The petitioners have also prayed for an appropriate writ, order or direction to prohibit the respondents from proceeding further pursuant to the aforesaid notices and summons.

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#. The facts leading to filing of this petition, briefly stated and as averred by the petitioners, are as under:-

#. Petitioner no.1, Madhupuri Corporation, is a Hindu Undivided Family (HUF) carrying on the business as a shroff at Rameshwar Complex, Lokhand Bazar, Bhavnagar. Petitioner no.3, Mahendra Himmatlal Shah, is the Karta of the said HUF. Petitioner no.3 is also proprietor of petitioner no.2 - firm, M/s Sagar Corporation, which also has a place of business at Rameshwar Complex. A search was carried out by respondent no.1 at the office premises of petitioners nos.1 and 2 and residential premises of petitioner no.3 and also at the office premises of other 12 concerns on 7.12.1999. The panchnama was prepared and inventory was made and books and documents and computer with floppies were seized. Statement of petitioner no.3 was recorded under Section 132(4) of the Act on 8.12.1999. Resopondent no.3 issued notice u/s 158-BC of the Act on 10.12.1999 and 18.1.2000 to petitioner no.3 and nos.1 and 2 respectively calling upon them to prepare true and correct returns for the block period 1.4.1989 to 7.12.1999. The petitioners objected to issuance of authorisation as well as search and seizure operations and issuance of notices under Section 158-BC of the Act vide their letter dated 20.12.1999. The petitioners also submitted their detailed reply dated 20.1.2000 objecting to the summons under Section 131 (1A) as well as notices under Section 158-BC of the Act. In this petition filed on 8.2.2000 the petitioners have challenged the aforesaid search and seizure operations pursuant to the

authorisation dated 7.12.1999 as also the aforesaid summons and notices u/s 131(1A) and 158-BC of the Act.

#. In response to the notice issued by this Court, affidavit-in-reply has been filed by respondent no.1 Mr Prabhat Jha, Deputy Director of Income-tax (Investigation), Bhavnagar, setting out what led to search and seizure:-

"Information had been gathered by the department that Shri Mahendra H Shah had been operating bank accounts in serveral names to deposit cash to pay cheque against this cash. Entries in accounts were large amount of cash. This being contrary to the provisions of Section 40A(3), 269SS, 269T etc. of Income-tax Act, the Department decided to probe the activities of Shri Mahendra H Shah discreetly.

It was gathered that Shri Mahendra H Shah would receive cash amounting to Rs.10 to 30 lacs on an average, on each working day. These amounts would be deposited in one of the several bank accounts, most of the accounts being in Shri Vardhman Coop. Bank Ltd. It was also gathered that Shri Mahendra H Shah received commission. Further, the party which was paying cash and receiving cheques was evading tax on its income. Thus, the aim of the department was not only to examine the unaccounted transactions of Shri Mahendra H Shah but also to enquire whether the other parties who were receiving cheques against payment of cash, were evading any tax."

The affidavit further sets out details of various transactions and instances showing the relationship of the various parties, whose names are set out in the authorisation, to M/s Madhupuri Corporation and the same read as under:-

"Further, independent of what Shri Mahendra H Shah says, the following instances show the relationship of the above referred parties with M/s Madhupuri Corporation :-

1 M/s Maruti Enterprise - Current A/c No.4316 in Shri Vardhman Coop. Bank Ltd. on 21.5.99. Cheques worth Rs.7,30,000/-, Rs.8,70,000/-, Rs.7,50,000/-, Rs.6,50,000/- are paid to M/s Madhupuri Corporation on 25.1.99.

- 2 M/s Nirav Computers - Current A/c No.3772
in Shri Varchman Coop. Bank Ltd. worth
Rs.4,95,000/-, Rs.5,15,000/- was paid to M/s M.
Sagar Corporation (proprietary concern of SHri
Mahendra H Shah) on 13.1.99.
- 3 M/s Mahakali Enterprise - Current A/c
4317 in Shri Vardhman Coop. Bank - Cash of
Rs.21,00,000/- is withdrawn by Shri Bhavesh Shah,
Accountant of M/s Madhupuri Corporation on
31.7.98.
- 4 M/s Nirav Soap Factory - A/c No.320 in
Shri Vardhman Coop. Bank Ltd. It has a
transaction of cash deposit and withdrawal of
Rs.22,00,000/over the years although return has
not filed. This is a sister concern of M/s
Madhupuri Corporation.
- 5 M/s Hitesh Trading Co. - A/c No.8314 in
Shri Vardhman Coop. Bank Ltd. on 5.10.98. Shri
Bhavesh Shah, Accountant of M/s Madhupuri
Corporation withdrawn Rs.39,50,000/- in cash.
Further, on 12.12.98, Hitesh Trading Co. gave
cheque of Rs.4,25,00/- to M/s Madhupuri
Corporation.
- 6 Paramound Trading Co. - A/c No.138 in
Shri Vardhman Coop. Bank Ltd. on 31.7.1998. Shri
Bhavesh Shah, Accountant of M/s Madhupuri
Corporation withdrawn Rs.30,00,000/-.
- 7 Kamlesh Trading Co. - A/c No.4315 in Shri
Vardhman Coop. Bank Ltd. on 31.7.1998 - Shri
Bhavesh Shah, Accountant of M/s Madhuri
Corporation withdrew Rs.18,00,000/-. Further, a
cheque of Rs.3,00,000/- was given to M/s
Madhupuri Corporation on the same date. Also,
on 5.10.98, Shri Bhavesh Shah, Accountant of M/s
Madhupuri Corporation withdrew Rs.33,40,000 in
cash.
- 8 M/s Mahavir Trading Co. is operating from
the same premises as M/s Madhupuri Corporation.
This case be seen from the address mentioned in
the bank account of M/s Mahavir Trading Co. - A/c
No.121 maintained in Sihor Mercantile Coop. Bank,
Shastrinagar Branch, Bhavnagar."

"It has further been claimed in para 4.6 that

information from books of accounts and those gathered from bank were circulated by giving copies of transactions gathered from bank were circulated by giving copies of transactions entered into by the petitioner, although entries pertaining to regular business were duly reflected in the books of accounts. Thus, the documents should not have been used by removing seal.

It is submitted that no information pertaining to respondent has been circulated. However, as submitted in paragraph no.2 on page 1 of this reply, the aim of the department was not only to examine the transactions of M/s Madhupuri Corporation but also to examine the transactions of beneficiary parties. With that view in mind and to examine the applicability of provisions of Section 68 of Income-tax Act in the case of these beneficiaries, such letters were issued. It may be pointed out that additions running into several crores of rupees are likely to be recommended on this account. Thus, no illegality has been committed in this regard."

CONTENTIONS ON BEHALF OF PETITIONERS:

#. At the hearing of this petition, Mr K.A. Puj, learned counsel for the petitioners, has raised the following contentions:-

- (i) The impugned authorisation dated 7.12.1999 was illegal because it was a common authorisation for 15 separate parties. In law, there cannot be any such common authorisation.
- (ia) Even if it is open to the authorities to issue any common authorisation, in the facts of the case, the respondent could not have issued any such common authorisation as the petitioner has no connection with other 13 parties as petitioner no.3 is the Karta of petitioner no.1 - Madhupuri Corporation (HUF) and proprietor of petitioner no.2 - M/s Sagar Corporation. The authorisation, therefore, suffers from non application of mind.
- (ii) There were several irregularities at the time of search.
- (iii) Although the search was concluded on 8.12.1999, respondent no.1 who was the authorised officer

did not hand over all the documents and books of accounts seized from the petitioner to the Assessing Officer having jurisdiction over the petitioners within a period of 15 days, as stipulated by proviso to sub-section (9A) of Section 132 of the Act. Therefore, all the notices issued u/s 158BC as well as summons issued u/s 131(1A) on 13.1.2000 were illegal and without jurisdiction.

In support of the said contentions, strong reliance is placed on the decisions of the Madras High Court reported at 166 ITR 244 and 237 ITR 70.

(iv) There are post search illegalities.

SUBMISSIONS ON BEHALF OF DEPARTMENT:

#. In reply, Mr Naik for the respondent has submitted as under:-

(i) the facts set out in the affidavit-in-reply extracted above clearly show that the petitioners were connected with other parties and that therefore search and seizure operations were required to be carried out simultaneously or in quick succession. There is no prohibition in law against issuing a common authorisation. The satisfaction note recorded by the competent officer clearly reveals application of mind to all the relevant facts showing that the parties were interconnected as reflected in the bank transactions.

(ii) The search and seizure operations were carried out in accordance with law and the allegations about the irregularities are not only vague but there is no foundation in the petition to make any such grievance.

(iii) On correct interpretation of the provisions contained in sub-section (9A) of Section 132 of the Act, respondent no.1 - authorised officer had the jurisdiction over the petitioners and was, therefore, entitled to retain the documents and books of accounts seized from the petitioners for a period of 180 days and that in any case the documents and books of accounts were handed over by respondent no.1 authorised officer to the concerned assessing officer before 18.1.2000 on

which date the assessing officer had issued notices u/s 158BC of the Act.

Even otherwise, the provisions of sub-section (9A) of Section 132 do not confer any right on the petitioners as they are merely procedural provisions for the internal management of the department.

In any view of the matter, any alleged non-compliance with any such procedural provisions has not caused any injustice or prejudice to the petitioners and therefore the discretionary relief under Article 226 of the Constitution of India may not be given to the petitioners.

(iv) There are no illegalities even in the post search period.

DISCUSSION:

Contention Nos.(i) & (ia):-

#. As far as the first ground of challenge is concerned, the only argument advanced by Mr Puj for the petitioner is that the provisions of Section 132(1) of the Act empowering the concerned officer/s to issue an authorisation require that the concerned officer has to have reason to believe that any person has undisclosed income or property and the powers of search and seizure are required to be exercised only in respect of that particular person. Hence, the Legislature intended that whenever any authorisation is to be issued, it should be with reference to one single individual or a person and not in respect of a number of persons or individuals.

As per the provisions of Section 2 of the General Clauses Act, 1897, singular includes plural and there is no prohibition against issuance of common authorisation when the competent authority has reason to believe that a number of persons are involved in interconnected transactions as reflected from the prima facie material available with the competent authority.

#. Mr Naik has shown for our perusal the original satisfaction note which was initially prepared by respondent no.1 and which was approved by the Additional Director of Income-tax (Inv.) at Rajkot as well as Director of Investigation (Inv.) at Ahmedabad. On

perusal of the said note and considering that the petitioners were dealing with large sums of money running into crores of rupees and still petitioners nos.1 and 3 had not filed any income-tax return all these years and that petitioner no.2 had also not any filed return for the last four years, as stated on behalf of the petitioners, we find that there was material available on the record of the respondents to arrive at a prima facie satisfaction that the respondent had reason to believe that the petitioners had undisclosed income or property. In view of this material, the contention on behalf of the petitioners that there was non application of mind by the authority issuing the authorisation cannot be accepted. Contentions nos.(i) and (ia) urged on behalf of the petitioners must, therefore, fail.

Contention No.(ii):-

#. As regards the contention about the alleged irregularity at the time of search and seizure, there is no material in the petition to require the respondent-authorities to deal with the same and therefore, Mr Naik is justified in contending that in absence of any specific allegation, the respondents cannot be expected to meet with the case now sought to be urged on behalf of the petitioners.

Contention No.(iii):-

##. The contention which has been most strenuously pressed by Mr Puj at the time of hearing of the petition is that respondent no.1, who was the authorised officer under section 132(1) of the Act, had no power or authority or jurisdiction to retain the documents and books of accounts seized from the petitioners for a period of more than 15 days from the date on which the search was carried out and concluded i.e. for more than 15 days from 8.12.1999. Mr Puj has relied on the provisions of sub-section (9A) of Section 132 of the Act which read as under:-

"(9-A) Where the authorised officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of sub-section (1), the books of account or other documents or assets seized under that sub-section shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of fifteen days of such seizure and thereupon the powers exercisable by the authorised officer under sub-section (8)

or sub-section (9) shall be exercisable by such Assessing Officer."

Mr Puj has further relied on the decision of the Division Bench of Madras High Court in 166 ITR 244 wherein it is held that when sub-section (9A) refers to an authorised officer having no jurisdiction over the person the reference is to an officer other than an Income Tax Officer having jurisdiction to make an order under sub-section (5) i.e. the Assessing Officer and that therefore if the Authorised Officer is an income-tax officer having jurisdiction over the person he can retain the records under sub-section (8) but if the authorised officer happens to be officer other than income-tax officer who is assessing officer, that officer shall hand over the documents to the assessing officer immediately after 15 days from the date of search.

##. On the other hand, Mr Naik for the respondent has submitted that the view of the Division Bench of the Madras High Court in the aforesaid decision is not the correct view and that the correct view is the one which was taken by the learned single Judge of the same High Court in the decision in K. Raju v. 3rd Income Tax Officer 153 ITR 138, where the learned single judge held as under:-

"Thus, it is clear that the jurisdiction of the officers of the Intelligence Wing over the persons will be co-extensive with that of the Commissioner's charge in which the wing is located. Therefore, when an Assistant Director of Inspection is authorised by the Commissioner under section 132(1)(a) of the Act to conduct a search, it would follow that such an Assistant Director of Inspection would also be the Authorised Officer having jurisdiction over the person subjected to search within the meaning of section 132(8) of the Act. Hence, the seventh respondent can perform all the functions under sub-sections (8) and (9) of section 132 of the Act in his capacity as the Authorised Officer having jurisdiction over the person referred to in clause (a) or (b) or (c) of sub-section (1) of section 132 of the Act without prejudice to the power of the Income-tax Officer who has jurisdiction under section 124 of the Act over the persons subjected to search."

Mr Naik further submitted that the investigating

officer i.e. the authorised officer in the instant case also had jurisdiction over the petitioners as the petitioners are carrying on their business and are residing at Bhavnagar and respondent no.1 - authorised officer is having jurisdiction over the case of the petitioners and, therefore, the provisions of Section 132 (8) of the Act are applicable and not the provisions of sub-section (9A) of Section 132 of the Act.

##. In rejoinder, Mr Puj submitted that if the view canvassed by the Department were to be accepted, the authorised officer who is not the assessing officer will get a blank cheque for a long period of 180 days and the assessee will not have any safeguards against the abuse or arbitrary use of the wide powers claimed by the officers under the aforesaid provisions of the Act.

##. Mr Naik has sought to allay the above apprehension by pointing out that the Department has issued the Search and Seizure Manual laying down various safeguards while carrying out search and seizure and also for the post-search work procedure. It is pointed out that as per para 5.02 of the Manual, the cash seized is required to be deposited in the personal account deposit of the Commissioner at the earliest opportunity and preferably on the next working day. Similarly, the jewellery should be transferred to the strong room / safe deposit vault of the bank and appropriate entries should be made in the register by the ADIT in-charge. As per para 5.04 of the Manual, within 24 hours of the search an intimation is to be sent to the Director of Income-tax (Investigation), DGIT (Investigation) and that report has to be uniformly termed as "Telex / Telegram Message" and will be numbered serially in each year.

It is submitted that in view of the safeguards which are detailed in the Search and Seizure Manual, there is no likelihood of any particular investigating officer having any scope for abusing his powers as all the developments are to be reported to the higher officers within 24 hours and the cash and jewellery are also to be deposited at the earliest opportunity, as stated above.

##. In our opinion, the legal contention urged on behalf of the petitioner is not required to be dealt with, as in the facts of the present case, we do not think it necessary to express any opinion on the said question since the documents and books of accounts were already handed over by the authorised officer to the concerned Assessing Officer before 18.1.2000 and that no prejudice

is shown to have been caused to the petitioners by their retention for a few days beyond a period of 15 days. In this connection, we may also refer to the principle enunciated by the Apex Court in Dr Pratap Singh v. Director of Enforcement 155 ITR 156, POORAN MAL V. DIRECTOR OF INSPECTION (INV.), INCOME-TAX, NEW DELHI 93 ITR 505 and RADHA KISHAN V. STATE OF U.P. AIR 1963 SC 822 that illegality of search does not vitiate evidence collected during such search, though the Court or the Authority before which such material or evidence is to be placed has to be cautious and circumspect while evaluating such evidence or material.

##. It is true that the major grievance which is being made on behalf of the petitioners is not the alleged illegality during the search but the retention of the documents by the authorised officer beyond the period of 15 days from the date of search. However, in the facts of the present case, nothing is brought to our notice to show as to what prejudice was caused to the petitioners by retention of the documents by the authorised officer for a few more days beyond the stipulated period of 15 days. In our opinion, even assuming that provisions of sub-section (9A) of Section 132 of the Act are applicable in the instant case, if the illegality of the search would not vitiate the evidence collected during such search, retention of the documents and books of accounts by the authorised officer for 15-20 days beyond the period of 15 days, would not vitiate the notices issued by the assessing officer u/s 131 (1A) and under Section 158BC of the Act.

Contention No.(iv):-

##. Mr Puj lastly submitted that the documents which were seized from the petitioners were sealed and once documents or materials are duly sealed, the same cannot be used by removing the seal affixed by the investigating officer during the course of investigation until the assessing officer making regular assessment feels it necessary. Mr Puj has submitted that copies of the documents seized during the raid at the petitioners' premises have been circulated to other parties and that this could not have been done without removing the seals by the investigating officer himself.

##. The allegation made by the petitioners is denied in para 12 of the reply affidavit filed by respondent no.1. It is stated that no seals have been broken, as alleged. At the hearing of the petition it is clarified by Mr Naik, learned Standing Counsel for the respondents under

the instructions from the officers of the Department, that the seals were placed on the bunch of papers in such a manner that no addition or deletion from the bunch could be made but that did not prevent the authorities from taking out photostat copies of the documents without removing the seals and that the seals which were placed on the bunch of the documents and signed have not been disturbed.

##. Looking to the nature of the documents and the purpose of the investigation, it is obvious that during the period for which the documents and books of accounts remained with the Authorised Officer, he would have to go through them and prepare the appraisal report. It is for this purpose that the documents and books of accounts are retained by him before they are handed over to the assessing officer. Looking to the aforesaid purpose of retaining the books of accounts and documents, the sealing procedure is evolved by the respondents in such a manner that although the documents can be xeroxed, no addition and/or deletion from the bunch is possible.

O R D E R

##. Since there is no substance in any of the contentions urged on behalf of the petitioners, the petition is dismissed. Notice is discharged with no order as to costs.

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